

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF MISSOURI (Springfield)

In Re:)	
)	
MARTY EUGENE BOX and)	Case No. 10-20086-abf7
TAMMY JEAN BOX,)	
)	
Debtors.)	
_____)	
)	
BAC HOME LOANS SERVICING, LP)	
f/k/a COUNTRYWIDE HOME LOANS SERVICING, LP,)	
)	
Creditor.)	

**TRUSTEE’S SUGGESTIONS IN
OPPOSITION TO MOTION FOR RELIEF FROM AUTOMATIC STAY**

COMES NOW Thomas J. O’Neal, Trustee, and suggests in response to the Motion for Relief from the Automatic Stay by BAC Home Loan Servicing, LP, f/k/a Countrywide Home Loan Servicing, LP, as follows:

1. BAC Home Loan Servicing, LP, f/k/a Countrywide Home Loan Servicing, LP (“Movant”) filed its Motion for Relief from the Automatic Stay claiming that it was the owner and holder of a Promissory Note, the repayment of which was secured by a Deed of Trust executed by the Debtors. The documents attached as part of the supplemental suggestions of Movant include a Promissory Note, a Deed of Trust, and an Affidavit. The Promissory Note is payable to Taylor, Bean & Whitaker Mortgage Corp. The beneficiary of the Deed of Trust is also Taylor, Bean & Whitaker Mortgage Corp. There is no assignment of the Deed of Trust produced by Movant. The Trustee believes that the Motion rises or falls based upon whether Movant is holder of the Promissory Note.

2. Movant bears the burden of proof on a motion to lift stay. To attempt to sustain its burden, Movant offers an Affidavit of one, Cametrice Jackson. The Trustee objects to the omission of the Affidavit. Under Rule 1002 Federal Rules of Evidence, the original writing is required to prove the content of a writing. The Affidavit is clearly hearsay. The Trustee cannot find a Federal Rule of Evidence which allows the omission of such an Affidavit. As the Movant has not produced any admissible evidence showing that it is the owner and holder of the Note, the Motion should be denied.

3. As earlier stated, the Note is payable to Taylor, Bean & Whitaker Mortgage Corp. There is an endorsement which appears on the last page of the Note which is blank. The Note is clearly bearer paper. The only way to establish that an entity is the owner and holder of bearer paper is to produce the original bearer paper. Movant has not produced the original Promissory Note. Therefore, Movant has failed in its burden of proof and the Motion should be denied.

4. If the Court considers the admissibility of the Affidavit of Cametrice Jackson, the Affidavit itself is not proof that the Movant owns and holds the Promissory Note. There are absolutely no statements of facts in the Affidavit. All of the statements in the Affidavit are conclusions and opinions, which in and of themselves, would not be admissible if Cametrice Jackson was present and testified in Court. There are no facts set forth in the Affidavit which supports the affiant's conclusions. There are no documents attached to the Affidavit which supports the affiant's conclusions and opinions. If this was a Motion for Summary Judgment, the Affidavit clearly does not comply with Rule 56(e) FRCP and would not be considered. Consequently, the Affidavit, even if allowed into evidence by the Court, should be totally disregarded as it is not an affidavit of fact, but an affidavit of opinion which is clearly not admissible.

In summary, the Trustee suggests to the Court that the Movant has not established that it is the owner and holder of the Promissory Note that is the basis for the Motion for Relief from Automatic Stay and therefore the Motion should be denied.

/s/ Thomas J. O'Neal
Thomas J. O'Neal, Trustee

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CERTIFICATE OF SERVICE

I hereby certify that I have served a true copy of the foregoing on the following named parties, either by electronic filing or by depositing a copy of same in the U.S. Mail, postage prepaid on this 19th day of May, 2010:

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/s/ Thomas J. O'Neal
Thomas J. O'Neal